

Nos. 24-0237, 24-0407

IN THE SUPREME COURT OF TEXAS

TEXAS GENERAL LAND OFFICE AND DAWN BUCKINGHAM, IN HER
OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER,

Petitioners,

v.

SAVERGV, SIERRA CLUB, AND
CARRIZO/COMECRUDO NATION OF TEXAS, INC.,

Respondents.

CAMERON COUNTY,

Petitioner

v.

SAVERGV, SIERRA CLUB, and
CARRIZO/COMECRUDO NATION OF TEXAS, INC.,

Respondents.

On Petition for Review
from the Thirteenth Court of Appeals, Corpus Christi-Edinburg

**PETITIONERS CAMERON COUNTY AND TEXAS GENERAL LAND
OFFICE AND DAWN BUCKINGHAM, IN HER OFFICIAL CAPACITY AS
THE TEXAS LAND COMMISSIONER'S
REPLY BRIEF ON THE MERITS ON PRIVATE RIGHT OF
ENFORCEMENT**

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Cameron County, Texas and the Texas General Land Office and Dawn Buckingham, in her Official Capacity as the Texas Land Commissioner, submit this Joint Reply to the Response Brief on the Merits by Respondents/Plaintiffs, pertaining to Issue I in Petitioners' Brief on the Merits concerning the proper construction of Article I, Subsection 33(d), Texas Constitution. As instructed by the Court, Petitioners have cooperated in the briefing of issues of this matter. Cameron County and the Texas General Land Office and Commissioner Dawn Buckingham join and fully incorporate the Reply Brief filed by Appellant Ken Paxton, Attorney General of the State of Texas on other issues.

I. Introduction

This case presents an issue of first impression concerning Article I, Section 33(d), Texas Constitution, which reads: “this section does not create a private right of enforcement.” This unique language does not appear elsewhere in the state constitution. Plaintiffs' Response Brief and the opinion of the court of appeals assign no meaning or effect to this provision adopted by the legislature and the voters and ignore its clear language. This result violates the precedents of this Court. “To interpret our Constitution, we give effect to its plain language. We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood.” *City of Beaumont v. Bouillon*, 896 S.W.2d 143, 148 (Tex. 1995). When reviewing a constitutional challenge to state law, the courts will “start

with the presumption that statutes enacted by the Legislature comply with both the United States and Texas Constitution.” *EBS Solutions, Inc. v. Hegar*, 601 S.W.3d 744, 754 (Tex. 2020). “The party asserting that the statute is unconstitutional bears a high burden to show unconstitutionality.” *Id.*

II. Private Right of Enforcement

Plaintiffs’ attempt to avoid the plain language of Article I, Section 33(d) by arguing that their claims do not assert a “private cause of action” and that an action for injunctive relief does not constitute a private cause of action. This is a false assertion. The most common form of relief sought and obtained through a private right of action is an injunction ordering a party to do something. An injunction is a form of relief; it is not a cause of action. There are two causes of action: 1) private and 2) public. Plaintiffs are clearly private entities, not public officials or agencies.

Plaintiffs also deny that they are seeking enforcement of a right under Art. I, Section 33, Texas Constitution, urging that they are only attacking the constitutionality of the provisions of H.B. 2623. This “fig leaf” cannot conceal the clear, repeated language of their pleading and briefs, which consistently urge a finding that H.B. 2623 violated the open beaches provision of Article I, Section 33, Texas Constitution. A statute cannot be attacked as unconstitutional without relying on a provision of the Texas Constitution. Since Article I, Section 33(d) has no private

right of enforcement, this section cannot provide jurisdiction for a cause of action by these private Plaintiffs.

Plaintiffs also argue that Article I, Section 29 provides for injunctive relief for any violation of the Bill of Rights. However, this injunctive relief is only available when the Plaintiff has pled a viable constitutional claim under a specific section of the constitution. *City of Houston v. Downstream Environmental, LLC.*, 444 S.W.3d 24 (Tex. App.—Houston 1st Dist. 2014, *pet. denied*). Since Plaintiffs’ private cause of action is barred by Art. I, Sec 33(d), they cannot assert a viable claim under that section, and no other section provides relief for alleged denial of access to public beaches. Plaintiff cannot overcome the specific prohibition against a private cause of action for enforcement under Section 33(d) by asserting a general right to injunctive relief under Article I, Section 29.

Finally, the argument that without Plaintiffs’ cause of action “Section 33 would be meaningless” fails to recognize that Section 33 is intended to be enforced by public agencies, not private parties. In fact, the legislature has fully authorized public agencies to implement the public beach access provisions of Article I, Section 33 by its enactment of Chapter 61, Natural Resources Code (Open Beaches Act). Enforcement of these provisions has been properly assigned to public agencies, including the Commissioner of the Texas General Land Office, and local public authorities. Section 61.108, Natural Resources Code specifically assigns

enforcement authority to “any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner....” Tex. Natural Resources Code § 61.108(a). These public officials are granted broad enforcement powers, including administrative orders, civil penalties, and injunctive relief. State and local officials perform these enforcement duties under the statutes and Article I, Section 33. The assignment of these enforcement duties was acknowledged early by the courts of Texas. *See Seaway Co. v. Attorney General*, 375 S. W. 2d 923, (Tex. App. – Houston, 1964, *writ ref. n.r.e.*); *Gulf Holding Corp. v. Brazoria County*, 497 S.W. 2d 614, (Tex. App.—Houston [14th Dist.] 1973, *writ ref. n.r.e.*). This litigation attempts to usurp the authority and responsibility for enforcement of the open beaches provisions of Article I, Section 33 assigned to public agencies and officials and delegate these powers to private parties in violation of the clear language of Subsection 33(d). Any revision of the stated policy of public enforcement as provided in the Texas Constitution should be determined by the voters, not by litigation by Plaintiffs under the guise of a declaratory judgment for injunctive relief.

III. Plaintiff’s Interpretation Invites Multiple Litigation

Plaintiffs contend that their litigation involves only the provisions of H.B. 2623, conveniently ignoring that the abrogation of the clear language against private enforcement in Article I, Section 33(d) will invite additional litigation by private parties against the multiple other statutes authorizing reasonable regulation of public

beaches by Texas counties and state agencies as enumerated in Petitioners' Brief on the Merits. Circumventing the exclusion of private enforcement will subject each coastal county to litigation for any beach regulation. Such litigation has not occurred previously because no decision has supported such an extreme and unreasonable interpretation of Article I, Section 33 of the Texas Constitution. This Court should not approve this attempt to insert a private right of enforcement into this provision of the Texas Constitution.

SUMMARY

Plaintiffs' cause of action is solely based upon a claim that H.B. 2623 violates the provisions of Article I, Section 33. "To obtain declaratory relief against the government it is necessary to show that the challenged law is invalid because it is unconstitutional, preempted by superior governing law, or banned for some other reason." *State v. Zurawski*, 690 S.W. 3d 644, 661 (Tex. 2024). Plaintiffs, as private parties, have no right of enforcement under the open beaches provisions of Article I, Section 33, Texas Constitution. With no right of enforcement, they lack standing to challenge the provisions of H.B. 2623 under this section of the Texas Constitution, and their pleading must be dismissed. The trial court properly granted the pleas to the jurisdiction by the Petitioners, and the court of appeals improperly reversed the trial court judgment.

PRAYER

Upon submission, this Court should reverse the judgment of the court of appeals, and either remand the case for further proceedings or render judgment dismissing this case for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this computer-generated Petition for Review contains 1,211 words which is less than 2,400 words and complies with Tex. R. App. P. 9.4(i)(2)(E).

/s/ James P. Allison
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CERTIFICATE OF SERVICE

I hereby certify that I have complied with the Texas Rules of Appellate Procedure and the Local Rules of this court and that the foregoing Reply Brief on the Merits has been electronically filed and served on the following counsel on this 8th day of October, 2025:

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Status as of 10/8/2025 1:54 PM CST

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